

## Nuclear Regulatory Commission

## §2.708

(8) A deponent whose deposition is taken and the officer taking a deposition are entitled to the same fees as are paid for like services in the district courts of the United States. The fees must be paid by the party at whose instance the deposition is taken.

(9) The witness may be accompanied, represented, and advised by legal counsel.

(10) The provisions of paragraphs (a)(1) through (a)(9) of this section are not applicable to NRC personnel. Testimony of NRC personnel by oral examination and written interrogatories addressed to NRC personnel are subject to the provisions of §2.709.

(b) Interrogatories to parties. (1) Any party may serve upon any other party (other than the NRC staff) written interrogatories to be answered in writing by the party served, or if the party served is a public or private corporation or a partnership or association, by any officer or agent, who shall furnish such information as is available to the party. A copy of the interrogatories, answers, and all related pleadings must be filed with the Secretary of the Commission, and must be served on the presiding officer and all parties to the proceeding.

(2) Each interrogatory must be answered separately and fully in writing under oath or affirmation, unless it is objected to, in which event the reasons for objection must be stated in lieu of an answer. The answers must be signed by the person making them, and the objections by the attorney making them. The party upon whom the interrogatories were served shall serve a copy of the answers and objections upon all parties to the proceeding within fourteen (14) days after service of the interrogatories, or within such shorter or longer period as the presiding officer may allow. Answers may be used in the same manner as depositions (see §2.706(a)(7)).

### **§2.707 Production of documents and things; entry upon land for inspections and other purposes.**

(a) Request for discovery. Any party may serve on any other party a request to:

(1) Produce and permit the party making the request, or a person acting

on his or her behalf, to inspect and copy any designated documents, or to inspect and copy, test, or sample any tangible things which are within the scope of §2.704 and which are in the possession, custody, or control of the party upon whom the request is served; or

(2) Permit entry upon designated land or other property in the possession or control of the party upon whom the request is served for the purpose of inspection and measuring, surveying, photographing, testing, or sampling the property or any designated object or operation on the property, within the scope of §2.704.

(b) Service. The request may be served on any party without leave of the Commission or the presiding officer. Except as otherwise provided in §2.704, the request may be served after the proceeding is set for hearing.

(c) Contents. The request must identify the items to be inspected either by individual item or by category, and describe each item and category with reasonable particularity. The request must specify a reasonable time, place, and manner of making the inspection and performing the related acts.

(d) Response. The party upon whom the request is served shall serve on the party submitting the request a written response within thirty (30) days after the service of the request. The response must state, with respect to each item or category, that inspection and related activities will be permitted as requested, unless the request is objected to, in which case the reasons for objection must be stated. If objection is made to part of an item or category, the part must be specified.

(e) NRC records and documents. The provisions of paragraphs (a) through (d) of this section do not apply to the production for inspection and copying or photographing of NRC records or documents. Production of NRC records or documents is subject to the provisions of §§2.709 and 2.390.

### **§2.708 Admissions.**

(a) Apart from any admissions made during or as a result of a prehearing conference, at any time after his or her answer has been filed, a party may file a written request for the admission of

the genuineness and authenticity of any relevant document described in or attached to the request, or for the admission of the truth of any specified relevant matter of fact. A copy of the document for which an admission of genuineness and authenticity is requested must be delivered with the request unless a copy has already been furnished.

(b)(1) Each requested admission is considered made unless, within a time designated by the presiding officer or the Commission, and not less than ten (10) days after service of the request or such further time as may be allowed on motion, the party to whom the request is directed serves on the requesting party either:

(i) A sworn statement denying specifically the relevant matters of which an admission is requested or setting forth in detail the reasons why he can neither truthfully admit nor deny them; or

(ii) Written objections on the ground that some or all of the matters involved are privileged or irrelevant or that the request is otherwise improper in whole or in part.

(2) Answers on matters to which such objections are made may be deferred until the objections are determined. If written objections are made to only a part of a request, the remainder of the request must be answered within the time designated.

(c) Admissions obtained under the procedure in this section may be used in evidence to the same extent and subject to the same objections as other admissions.

**§ 2.709 Discovery against NRC staff.**

(a)(1) In a proceeding in which the NRC staff is a party, the NRC staff will make available one or more witnesses, designated by the Executive Director for Operations or a delegatee of the Executive Director for Operations, for oral examination at the hearing or on deposition regarding any matter, not privileged, that is relevant to the issues in the proceeding. The attendance and testimony of the Commissioners and named NRC personnel at a hearing or on deposition may not be required by the presiding officer, by subpoena or otherwise. However, the presiding officer

may, upon a showing of exceptional circumstances, such as a case in which a particular named NRC employee has direct personal knowledge of a material fact not known to the witnesses made available by the Executive Director for Operations or a delegatee of the Executive Director for Operations, require the attendance and testimony of named NRC personnel.

(2) A party may file with the presiding officer written interrogatories to be answered by NRC personnel with knowledge of the facts, as designated by the Executive Director for Operations, or a delegatee of the Executive Director for Operations. Upon a finding by the presiding officer that answers to the interrogatories are necessary to a proper decision in the proceeding and that answers to the interrogatories are not reasonably obtainable from any other source, the presiding officer may require that the NRC staff answer the interrogatories.

(3) A deposition of a particular named NRC employee or answer to interrogatories by NRC personnel under paragraphs (a)(1) and (2) of this section may not be required before the matters in controversy in the proceeding have been identified by order of the Commission or the presiding officer, or after the beginning of the prehearing conference held in accordance with § 2.329, except upon leave of the presiding officer for good cause shown.

(4) The provisions of § 2.704(c) and (e) apply to interrogatories served under this paragraph.

(5) Records or documents in the custody of the Commissioners and NRC personnel are available for inspection and copying or photographing under paragraph (b) of this section and § 2.390.

(b) A request for the production of an NRC record or document not available under § 2.390 by a party to an initial licensing proceeding may be served on the Executive Director for Operations or a delegatee of the Executive Director for Operations, without leave of the Commission or the presiding officer. The request must identify the records or documents requested, either by individual item or by category, describe each item or category with reasonable particularity, and state why that